

FEB 07 1986

February 5, 1986

DATE

OFFICE OF THE ZONING AND SUBDIVISION EXAMINER
KING COUNTY, WASHINGTON

DECISION ON AN APPEAL FROM NOTICE AND ORDER OF KING COUNTY CODE VIOLATION AND CIVIL PENALTY ORDER.

SUBJECT: Building and Land Development File No. 85-1313;

Code Enforcement Appeal of
Constructors PAMCO, Inc.
(Desimone Trust, c/o Rainier Bank)

Property located in the vicinity of 10111 West
Marginal Place South

The Building and Land Development Preliminary Report on
Item No. 85-1313 was received by the Examiner on December
17, 1985.

PUBLIC HEARING:

After reviewing the Building and Land Development Report,
examining available information on file, the Examiner
conducted a public hearing on the subject as follows:

The hearing on Item No. 85-1313 was opened by the Examiner at
9:30 a.m., December 31, 1985, in Room No. 854, King County
Administration Building, Fourth Avenue and James Street,
Seattle, Washington and adjourned at 9:48 a.m. The hearing was
reopened at 9:10 a.m., January 21, 1986, in Room 404, King
County Courthouse, Third Avenue and James Street, Seattle,
Washington and closed at 11:53 a.m. Participants at the public
hearing and the exhibits offered and entered are listed in the
attached minutes. A verbatim recording of the hearing is
available in the office of the Zoning and Subdivision Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record
in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. The subject property is located on the west side of the
Duwamish River in the vicinity of 10111 West Marginal
Place South.
2. On October 17, 1985 the King County Building and Land
Development Division served a notice of code violation,
civil penalty order, abatement order, and notice of lien
on the owners, Desimone Trust, and the appellant
Constructors PAMCO, Inc. This notice and order cited
violations of KCC 16.82.100 and KCC 16.82.120, regarding
grading violations; and violations of KCC 25.16.030 and
KCC 25.16.070, regarding shoreline management
violations.

DFT 001382

The notice and order cites the appellant for filling urban classified shorelines without permit, and for failing to provide erosion/sedimentation controls. In order to bring the property into compliance, the appellant is ordered to accomplished the following:

1. Immediately stabilize all slopes and implement erosion/sediment controls.
2. Remove all fill and rehabilitate the site; or,
3. Obtain all required county, state and federal permits.
3. The notice and order states that if all violations are not corrected by October 28, 1985, then there shall incur a cumulative civil penalty in the amount of \$500.00 per day, per violation, plus billable costs of the Division of Building and Land Development. This civil penalty would be charged as a personal obligation of the property owner and as a lien against the property.
4. Video tapes entered into evidence (Exhibit No. 8) indicate dumping of earth below the high water level during the period October 15-17, 1985. The tape also shows portions of a silt fence, installed in order to comply with county requirements, up to 18 inches below the water level.

A January 3, 1986 video tape (Exhibit No. 20) shows portions of the fill caved in along the slip area, with sloughing and cracks along the crest of the fill. The January 12, 1986 video tape reveals a washed out silt fence, continued erosion, and new landfill activity in the same area. The tape also shows a high turbidity level in the water, even after several days of dry weather. Excelsior has been distributed intermittently along the landfill slopes, though it is unclear whether this erosion retardant has functioned successfully.

The January 12, 1986 video tape (Exhibit No. 21) also shows substantial construction storage in the disputed area: rubble, debris, stacks of pallets, concrete forms, lumber, and equipment. The Building and Land Development Division Shoreline Management representative contends that the extensive proliferation of storage on the site constitutes an established use of the site, and therefore, requires a shoreline management substantial development permit. Further, the Division's shoreline representative observes, more than \$1,000 worth of earth movement has occurred and that this, too, requires shoreline management substantial development review and approval.

5. The appellant responds that Constructors PAMCO, Inc. will apply for whatever permits are necessary, but questioned the need to obtain a substantial development permit. The appellant estimates the cost of obtaining a substantial development permit to be \$20,000 to \$30,000. In lieu of obtaining such a permit, the appellant is willing to keep all buildings more than 200 feet from the water.

The appellant further argues that the ultimate use of the property is not presently known and that therefore they do not see the need for a substantial development permit. The present storage of construction materials and heavy equipment, according to the appellant, is only an "interim purpose."

6. The shoreline representative contends that the appellant's cost estimate for obtaining a substantial development permit is exaggerated.

7. Several public agencies have expressed strong interest in this situation. The Seattle District, Corps of Engineers advises the appellants that the civil penalty for violation of Section 301 of the Clean Water Act can be a fine as high as \$10,000 per day, for each day that the unauthorized fill is in place.
8. The Washington State Department of Fisheries advised the appellant on November 6, 1985 that state law required that a hydraulic project approval be obtained from the Washington Department of Fisheries or Washington Department of Game prior to construction activities within surface waters of the state. The Department of Fisheries notes that, "if this fill material is to be removed it will be necessary to obtain an hydraulic project approval (HPA)." See Exhibit 2.
9. On October 15, 1985 the Washington State Department of Ecology issued a warning letter to Constructors PAMCO, Inc. regarding several "front loader" buckets of dirt or fill material being deposited below the high water mark. The letter indicates that the appellant had advised the State Department of Ecology that the purpose of the deposition was to facility launching of an aluminum boat or vessel, and that it was a one time only incident (Exhibit 3).
10. The Muckleshoot Indian Tribe Fisheries Department comments:

The wetland in question is one of the few in the waterway that has remained relatively undeveloped. We recommend that it be left undeveloped, and that the parties responsible for this illegal fill be required to fully restore what they have destroyed so that no net loss of any in-kind habitat is realized.

11. From examining aerial photographs, a wetlands ecologist for the Department of Ecology concludes that the Corps of Engineers public notice drawing, depicting unauthorized fill, is accurate. The appellant disagrees. According to the appellant, this disagreement constitutes the principal reason for lack of compliance with the notice and order. The appellant argues that it is difficult to determine what specific measures must be taken to satisfy the several public agencies which have expressed regulatory interests in this issue: Corps of Engineers, King County Grading, King County Shoreline Management, State Department of Fisheries, and State Department of Ecology. For this reason, the appellant contends, restoration works has been delayed.

In the appellant's view, it would be appropriate for the Corps of Engineers to substantially reduce its estimation of the full extent of the "unauthorized fill" (Exhibit No. 1). Further, the appellant seeks a coordinated, comprehensive response from all of the affected public agencies.

12. A grading permit was issued for a substantial portion of the site on September 9, 1985. This grading permit, approved by the Surface Water Management Division states: "PROJECT LIMIT - DO NO WORK NORTH OF THIS LINE!" The grading plans also depict a "200 FOOT MINIMUM SETBACK" between the most waterward limit of the grading to occur (to be circumscribed by a silt fence) and the high water line.

The erosion/sedimental control and grading notes on the Constructors PAMCO, Inc. grading permit includes the following:

3. The contractor is solely responsible for the means and methods of construction...
5. All limits of clearing and areas of vegetation preservation as described on the plan shall be clearly flagged in the field and observed during construction.
13. The appellant argues that the previous unauthorized occupant of the property (Willard) left a substantial amount of junk on the property, including a ferry, two barges, and other debris. The appellant argues that the county has been unclear regarding whether this junk must be moved to comply with the grading/shoreline management requirements of the county. Additionally, the appellant complains, the County has not assisted in forcing eviction of Willard or in forcing Willard to remove his junk.

County staff responds that the cited violations relate to the leveling of land, land clearing, and the substantial movement of earth, and do not relate to the "movement of junk."

14. The appellant argues that there are other violations on the Duwamish River which are more severe than these violations, and that the County should pursue those violations as well. Further, the appellant asks for county assistance in forcing the previous occupant of the property to remove the items described in Finding No. 13, above.

The Building and Land Development Division grading representative suggests that this is not an arbitrary case, and that similar cases are being pursued in the Bear Creek and May Valley areas.

15. The Division's grading representative considers "restoration," as required in the notice and order, to mean the following:
 - A. Unauthorized fill must be removed;
 - B. Temporary measures must be removed;
 - C. A certified wetlands biologist must be retained to determine the destroyed vegetation and appropriate revegetation;
 - D. An erosion/sediment control plan prepared by a registered engineer familiar with KCC 20.50 and KCC 16.82 must be approved, and implemented.

The appellant agrees to such a plan, and asks for an opportunity to meet on-site with all of the regulatory agencies having interest in the development, in order to derive an agreed upon fill removal plan.

The appellant also states that, "we want proof that the county is pursuing other violations and the Willard junk."

16. KCC 16.82, KCC 20.50, and KCC 25.16, are each incorporated in these findings by this reference.

CONCLUSIONS:

1. From Exhibit No. 19, Exhibits Nos. 8, 20, and 21, from correspondence in the record, and from Finding Nos. 4 and 12, above, it is clear that the violations of King County

grading regulations and shoreline management regulations have been intentional. Professional contractors such as the appellant must know the regulatory violation risks they take by extending earth movement, land clearing and leveling activities substantially waterward past the limits required by Exhibit No. 19 (grading permit approved September 9, 1985).

The record is clear that, even after the appellant knew the issue existed, even after the notice and order had been presented, landfill activity continued to occur. See Finding No. 4, particularly. The record also indicates that the appellant misled the State Department of Ecology by describing the landfill in October as a "one-time incident" with "no future plans to do additional work near the waters' edge." (Exhibit 3, Finding No. 9: Compare with Finding No. 41, Exhibits 8, 20, and 21.)

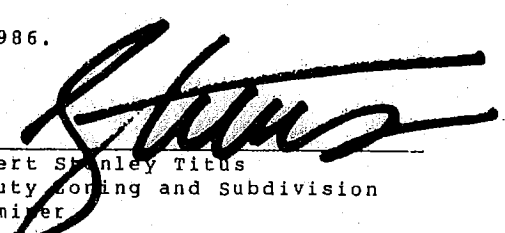
2. The unauthorized landfill violates King County grading permit requirements.
3. The unauthorized landfill clearly violates the specific terms, conditions, and limitations contained in the September 9, 1985 grading permit issued to the appellant (Exhibit No. 19).
4. The unauthorized landfill and the present use of the filled area each constitute a violation of shoreline management substantial development permit requirements.
5. The full extent of all specific grading requirements (KCC 16.82), specific shoreline management requirements (Title 25, King County Code), and erosion/sedimentation control requirements (KCC 20.50) is not wholly known, since the applicant has failed to obtain the required permits and approvals pursuant to these laws. The appropriate way to exactly define these requirements -- such as proper drainage methods, bank protection, setbacks, storm water detention calculations, and so on -- is to go through the proper application procedures.
6. Adequate interim protective measures must be taken immediately. These measures must be sufficient to prevent further site, wetland, and waterway damage.
7. The full extent of unauthorized landfill which must be removed prior to full restoration of the site is unclear. The willingness of the appellant to comply with restoration requirements, and the willingness of county staff to concede that the Corps landfill description may be excessive, provides substantial promise that a satisfactory landfill removal and site restoration plan may be achieved.

DECISION:

1. The appeal is DENIED.
2. For violations occurring in the period of October 15-17, 1985 and on or about January 4, 1986, the civil penalty imposed by the notice and order dated October 28, 1985 (Case No. 85-1313) is affirmed. The cumulative penalty, however, shall be limited to \$1,500.00. This civil penalty is charged as a personal obligation of the property owner and as a lien against the property.

3. Within 20 days following the transmittal date indicated below, the appellant Constructors PAMCO, Inc. shall have applied for a King County grading permit and for a substantial development permit, or shall incur a cumulative penalty in the amount of \$500.00 per day, plus billable costs of the Division of Building and Land Development, to be incurred until the violations are corrected as specified by the Building and Land Development Division, consistent with KCC 25.16 and KCC 16.82.
4. Within 10 days following the transmittal date indicated below, King County will provide the applicant with specific instructions regarding silt fence placement, proper mulching, netting, or other interim measures required by KCC 16.82 or KCC 20.50. Within 20 days following the transmittal date indicated below, the appellant will have complied with those required interim measures, or shall incur a cumulative civil penalty of \$500 per day, plus billable costs of the County.
5. If grading permit compliance has not been achieved within 90 days following the date of transmittal indicated below, then the manager of the Division of Building and Land Development will abate the violations of KCC 16.82 by causing the necessary corrective work to be accomplished. The cost of the abatement work will be charged as a personal obligation of the property owner and as a lien against the property.
6. Within 30 days following the date of transmittal below, the applicant shall submit an application for a substantial development permit which fully complies with the requirements of Title 25, King County Code. The required substantial development permit application will address not only land contour modifications, earth movement, and levelling, but also will address the present construction storage yard use of the property, or other intended use.
7. The Division will periodically bill the property owner for the civil penalty amount incurred up to and through the date of billing. Periodic bills will be due and payable 30 days from receipt. The civil penalty will be charged as a personal obligation of the property owner and as a lien against the property.

ORDERED this 5th day of February, 1986.


Robert Stanley Titus
Deputy zoning and Subdivision
Examiner

TRANSMITTED this 5th day of February, 1986, by certified mail, to the following parties of record:

Desimone Trust, c/o Rainier Bank, Bob Reynolds
Doug Scheumann, Constructors PAMCO, Inc.
Lee Moyer, Friends of the Duwamish
Paul Hickey, Muckleshoot Tribe

TRANSMITTED this 5th day of February, 1986, to the following:

Rudy Allred, Code Enforcement
Pat Downs, Building and Land Development Division
James Ballwebber, Grading Inspector
Mary Burg, Shorelands Division, Dept. of Ecology
Bob Martin, Corps of Engineers
Phil Kauzloric, Department of Fisheries
David Bortz, Puget Sound Water Quality
Vicky Ridge Cooney, METRO
King County Department of Public Works
King County Health Department
Washington State Department of Transportation

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decisions shall be final and conclusive unless within 20 days from the date of the decision an aggrieved party or person applies for a writ of certiorari from the Superior Court in and for the County of King, State of Washington, for the purpose of review of the decision.

MINUTES OF THE DECEMBER 31, 1985 AND JANUARY 21, 1986, PUBLIC HEARINGS ON FILE NO. 85-1313 - CONSTRUCTORS PAMCO, INC.

Robert Stanley Titus was the hearing examiner in this matter. Participating in the hearing were Pat Downs and Jim Ballwebber, representing the Building and Land Development Division, Lee Moyer and Doug Scheumann.

The following exhibits were offered and entered into the record:

Exhibit No. 1	Corps of Engineers drawings (2)
Exhibit No. 2	Department of Fisheries letter to PAMCO dated 11/6/85
Exhibit No. 3	Department of Ecology letter to PACOM dated 10/15/85 (warning letter)
Exhibit No. 4	Department of Ecology letter to PAMCO dated 12/12/85 (review of fill)
Exhibit No. 5	Muckleshoot Indian Tribe letter to BALD dated 11/25/85
Exhibit No. 6	PAMCO letter to Pat Downs dated 10/22/85
Exhibit No. 7	Grading Section memorandum to Pat Downs dated 11/19/85
Exhibit No. 8	Video cassette presented by Lee Moyer taken 10/85
Exhibit No. 9	Photographs presented by Lee Moyer
Exhibit No. 10	PAMCO Site Plan
Exhibit No. 11	Corps of Engineer letter to PAMCO dated 1/10/86
Exhibit No. 12	Letter from PAMCO to Pat Downs dated 1/10/86
Exhibit No. 13	Letter from PAMCO to J. Ballwebber dated 1/10/86
Exhibit No. 14	Letter from BALD to PAMCO
Exhibit No. 15A-I	Photographs dated by Grading Section
Exhibit No. 16	Notice and Order dated 10/17/85
Exhibit No. 17	Memorandum from Ballwebber to Titus dated 1/15/86
Exhibit No. 18	Staff Report dated 12/31/85
Exhibit No. 19	Grading Plan

DFT 001388

Exhibit No. 20 Video cassette presented by Lee Moyer, taken
 1/3 - 1/16/86
Exhibit No. 21 Video cassette presented by Lee Moyer taken
 1/20/86

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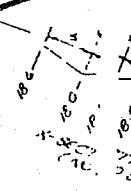


Exhibit B

